In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-55

CECELIA PELAEZ, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks review of the denial of her application for suspension of deportation on grounds of extreme hardship.

Petitioner is a native and citizen of the Philippines. She was admitted to the United States as a non-immigrant visitor on November 11, 1964. Her status was subsequently changed to that of a non-immigrant student and she was authorized to remain in this country until November 17, 1968. However, petitioner illegally remained here beyond the authorized period and deportation proceedings were commenced. Following a hearing, at which she conceded the factual allegations of the deportation charge, petitioner was found deportable and granted the privilege of voluntary departure.

Petitioner thereafter moved to reopen the proceeding to apply, pursuant to 8 U.S.C. 1254(a)(1),[1] for suspension of deportation. The motion was granted and a new hearing was held on February 13, 1973. At the hearing, petitioner attempted to make the required showing of extreme hardship by arguing that she would suffer economic disadvantages if she were required to return to the Philippines. Petitioner testified that, although she was employed as a governess (R. 31, 32),[2] she had been trained as a computer programmer and would be unable to obtain employment in that capacity in her native country (R. 35). Petitioner also noted that she has no relatives in the United States and that her family resides in the Philippines (R. 30-31).

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[1]8 U.S.C. 1254(a)(1) provides, in pertinent part:

> [T]he Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and—
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> (1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

[2]"R." refers to the certified record of the deportation proceedings.

The Immigration Judge denied relief, finding (Pet. App. 3a) that "[E]conomic detriment in and of itself does not amount to 'extreme hardship' " and that "Other than respondent's self serving statement there is no evidence present in the record showing that the respondent could not obtain suitable employment in the Philippines" (*id.* at 4a).

The Board of Immigration Appeals affirmed, ruling (Pet. App. 7a) that "[E]xtreme hardship is not present in this case."

The court of appeals affirmed. Although the Immigration Judge said that he would have denied relief under the protected status doctrine even if petitioner had demonstrated extreme hardship, the court affirmed solely "on the failure of petitioner to establish extreme hardship" (Pet. App. 12a, n. 3).

1. Petitioner claims that the decision of the court of appeals conflicts with several decisions of the Ninth Circuit[3] disapproving denials of discretionary relief by the Board of Immigration Appeals based on the "protected status" doctrine, which provides that applicants for suspension of deportation who have spent all or substantial portions of the required seven-year period in this country (Section 1254(a)(1)) in a protected status (for example, under a student visa) must show special equities beyond extreme hardship as a condition of relief. But the court of appeals specifically declined to face this issue and based its holding instead on petitioner's failure to demonstrate extreme hardship (Pet. App. 12a, n. 3). Thus the conflict petitioner asserts does not exist.

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[3]*E.g., Asimakopoulos* v. *Immigration and Naturalization Service*, 445 F.2d 1362 (C.A. 9); *Chan* v. *Rosenberg*, 445 F.2d 1399 (C.A. 9).

2. Petitioner also contends (Pet. 13) that it is a "common practice" for the Board of Immigration Appeals to deny relief to aliens without family ties in this country on the grounds that any hardship faced by them is merely "economic," and that "very likely" the Board frequently fails properly to consider legitimate claims of noneconomic hardship. These allegations are wholly unsupported by petitioner and unsupportable in fact. If the thrust of petitioner's argument is that she demonstrated other-than-economic hardship and was wrongfully denied relief, that claim must fail. Her position, before the Immigration Judge and now, is essentially that (Pet. 12) upon deportation she will be compelled to change "her way of life from that of a self-supporting, relatively comfortable city dweller in the United States to an inhabitant of a primitive tenant farm in the Philippines * * *." This assertion was based, in turn, only on petitioner's statement (Pet. App. 4a) that she could not find suitable employment in the Philippines. On this record, as the Board of Immigration Appeals and the circuit court correctly ruled, the Immigration Judge did not abuse his discretion in finding that extreme hardship within the meaning of Section 1254(a)(1) had not been demonstrated. See *Nishikage* v. *Immigration and Naturalization Service*, 443 F.2d 904 (C.A. 9); *Yeung Ying Cheung* v. *Immigration and Naturalization Service*, 422 F.2d 43 (C.A. 3).

3. In a related argument, petitioner claims that Section 1254(a)(1) unconstitutionally discriminates against aliens without family ties in this country. This contention was correctly rejected by the court of appeals, upon whose opinion (Pet. App. 12a) we rely:

> We find no merit in this contention. Congress has plenary power in the immigration area, particularly

in determining which aliens will be admitted and the period they shall remain. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-591 * * *. Additionally, the statutory history of Section 1254(a) discloses that the suspension provision was originally enacted in 1940 solely to deal with hardships to the alien's family in the United States which would result from deportation. Eight years later, Congress extended the suspension process to aliens who could show extreme hardship when they had no family ties in this country. Act of July 1, 1948, 62 Stat. 1206; see 2 Gordon and Rosenfield, Immigration Law and Procedure §7.9a (1972). Congress' extension of the Act to include aliens, such as Pelaez, negates any claims of discrimination.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.